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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

November 15, 2000

VIA COURIER

Ms. Magalie R. Salas
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W., Room TW-A325
Washington, D.C. 20554

ORIGINAL

Re: Comments of Charter Communications, Inc. in Docket No. 97-80

Dear Ms. Salas:

Charter Communications, Inc. ("Charter") respectfully submits the enclosed Comments of Charter Communications, Inc. in Response to Further Notice of Proposed Rulemaking in relation to the Commission ongoing navigation devices proceeding, CS Docket No. 97-80. Please find enclosed an original, four copies and a stamp-and-return copy of Charter's comments. A diskette containing these Comments in electronic form, accompanied by a cover letter, has been sent to Mr. Thomas Horan pursuant to instructions given in the Further Notice of Proposed Rulemaking.

Kindly stamp the enclosed stamp-and-return letter and give it to the courier for return delivery to us. Please do not hesitate to contact undersigned counsel should you have any questions regarding Charter's submission.

Respectfully submitted,



David N. Tobenkin

For: Charter Communications, Inc.

Enclosures

11-15-2000 014

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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In the Matter of)	
)	
Implementation of Section 304 of the)	CS Docket No. 97-80
Telecommunications Act of 1996)	
)	
Commercial Availability of Navigation Devices)	

**COMMENTS OF CHARTER COMMUNICATIONS, INC.
IN RESPONSE TO FURTHER NOTICE OF PROPOSED RULEMAKING**

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November 15, 2000

**Before the
FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)	
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**COMMENTS OF CHARTER COMMUNICATIONS, INC.
IN RESPONSE TO FURTHER NOTICE OF PROPOSED RULEMAKING**

Charter Communications, Inc. ("Charter"), by its attorneys, hereby submits its comments in response to the Commission's Further Notice of Proposed Rulemaking ("Notice") in the above-captioned proceeding.¹

Charter is in the middle of a \$3.5 billion rebuild and upgrade program designed to offer customers advanced and digital services over one of the most robust broadband infrastructures in the industry. By the end of this year, about 70% of Charter's 6.3 million customers will be served with upgraded plant. By the end of the year 2002, nearly 93% of Charter's customers will be served by 750 MHz plant or greater, providing full, two-way interactive capability. Consumers have been particularly delighted by our digital services. In the third quarter alone, Charter added 279,000 digital cable customers, averaging 21,500 installations per week, bringing our total at September 30, 2000 to 653,800 digital customers and 184,600 data customers. Such expansion has allowed aggressive deployment of advanced data and video services. One example is our recent launch of video-on-demand to about 167,000 homes in the Pasadena area of Los Angeles, with a planned rollout to 275,000 subscribers by year end.

¹ Further Notice of Proposed Rulemaking, *In the Matter of Implementation of Section 304 of the Telecommunications Act of 1996*, CS Docket No. 97-80, FCC 00341 (released September 18, 2000) ("Notice").

The deployment of these digital services is part of an intense competitive contest between DBS and cable. Pursuant to a Commission exemption, DBS offers digital service through integrated set-top devices. At present, pursuant to FCC timetables, Charter also offers digital service through integrated set-top devices. Within the same space, Playstation 2 also offers digital service through integrated devices, and Microsoft Xbox will do so shortly. This pattern largely reflects the constraints of existing technology and the challenges of rapid innovation in set-top devices. The National Cable Television Association has previously reported how the cable industry met the FCC's timetables for segregating security functions from host devices. Nonetheless, at this moment integrated set-top devices remain the most efficient vehicle for providing digital functionality to cable customers. For example, an integrated Explorer set-top device will process out of band signals, interactive program guides, and other functions with virtually no consumer intervention. As yet, there are no standards assuring inter-brand compatibility, security, or updates to embedded set-top operating systems, so that processing, security, and obsolescence remain issues in a foreign host-foreign POD environment. This may be one reason that consumer electronics retailers have not yet ordered host devices. (Another, well documented by NCTA, is the unresolved interest by retailers in obtaining a share of digital revenues and in obtaining regulatory price supports for retail box prices.) Charter is addressing the technical issues jointly through the OpenCable initiative, and individually in collaboration with vendors over security concerns. Charter anticipates that these issues can be resolved within the 2000-2004 window provided by Commission rules for the sale and leasing of new integrated devices, but we do not believe that they can be resolved immediately merely by accelerating the sunset date for such activities.

In this environment, a sudden change in the sunset date would have some dramatic and harmful effects on Charter's digital upgrades and on its customers' choices.

The current environment has been hospitable to extending cost savings to customers. Charter is able to negotiate volume discounts from its current suppliers. If the ban were suddenly accelerated, it would likely impact deployment volumes and raise our costs for obtaining and deploying set-top boxes. These costs flow through to customers in regulated equipment prices.

The current environment has also spurred research and development and innovation by cable operators and their partners. For example, Charter recently announced a joint venture with Motorola, Inc.'s Broadband Communications Sector, Replay TV, Inc. and Vulcan Ventures to develop and integrate digital video recording capabilities in advanced digital set-top boxes that will allow storage of video, audio and Internet content, allowing a more robust platform for future services and allowing new applications to reside on the advanced digital set-top terminal. *See Cable Notes*, WARREN'S CABLE REGULATION MONITOR, Oct. 9, 2000.² If the sunset date were accelerated, R&D associated with integrated boxes would be lost, and the incentives for further research would be immediately reduced.

The current environment has allowed direct competitors to offer their digital services using the most efficient (integrated) technology. If the sunset date were accelerated, cable operators would be significantly handicapped, being forced at least to redirect energies from offering customers existing digital functionalities over widely available set-top devices. Customers would

² Others have made similar innovations in set-tops. *See, e.g.,* Sandeep Junnarkar, *Liberty Media's Interactive Venture* (Sept. 29, 1998) <<http://news.cnet.com/news/0-1003-200-333672.html>> (describing the creation of Liberty Interactive to create content to take advantage of new set-top box innovations and capabilities); Broadband Briefs, *Nokia Launches New Set-Tops, LSI Logic Shows New Set-Top Chip*, MULTICHANNEL NEWS (May 24, 1999) <<http://www.multichannel.com/weekly/1999/22/tbrf22.htm>> (stating that Nokia launched new digital set-top boxes and that LSI introduced a new device for enabling multimedia capabilities on advanced digital set-top boxes); Daily Update, *S-A Ships Advanced Interactive Boxes*, MULTICHANNEL NEWS (October 20, 2000) <<http://www.multichannel.com/daily/36d.shtml>> (stating that S-A has started to ship its new line of Explorer 2100 and 3100 advanced digital set-tops, which house inter-active television features and a next-generation digital decoder). Most recently, two leading cable-modem manufacturers have included a new advanced single-chip made by Conexant Systems that prevents equipment obsolescence by accommodating new features and standards via network downloads into a product design that has been certified by CableLabs. *See Cable-Modem Manufacturers Deploy Conexant's Infosurge*, MODEM USERS NEWS, Vol. 12 No. 11, Nov., 2000.

lose functionalities and competitive offerings as the industry struggled to overcome the unresolved set-top issues that OpenCable is now resolving on schedule. The development of the non-integrated set-top was completed by both major vendors while the rules for such development were still fluid. The result to date are commendable: the FCC's directives were met, but not all set-top functionalities have yet been optimized. Optimization of all non-integrated set-top functionalities will take considerably more time, dependent in part on marketplace demand for the devices. Even if the rules were changed, development time would still be considerable. When such optimized set-tops are available for deployment, the price will be considerably higher than set-tops available today. The effect of accelerating the ban would be to slow deployment and increase costs. Slowing deployment would also slow development of new services that Charter would offer on the set-top since many features are hardware dependant.

These results would occur even if the embedded base of set-tops in use and in inventory could be recycled and re-deployed. If the Commission were to construe its rules even more restrictively, purchasing and deployment of digital devices would be even more restricted. In other contexts, the Commission would likely find the current state of competition and innovation alone sufficient to justify the removal of structural separations, rather than their tightening. From the Commission's early retreat from *Computer II* separations,³ to this year's adjustment of SBC's Merger Order to permit the more rapid deployment of ADSL through Project Pronto,⁴ the Commission has sought to allow new technologies (particularly those

³ See Notice of Proposed Rulemaking, *In the Matter of Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services*, 10 FCC Rcd 8360, ¶¶ 4-6 (1995) (describing Commission elimination of a requirement that the then-integrated Bell System, and later the Bell Operating Companies, establish separate subsidiaries for the provision of enhanced services because "structural separation inhibited the deployment of enhanced services").

⁴ See Second Memorandum Opinion and Order, *Ameritech Corp.*, 2000 FCC Lexis 4764, ¶¶ 21-23 (Sept. 8, 2000) (modifying the Merger Conditions to allow SBC's incumbent LECs to own and operate advanced services equipment such as ADLU Cards in their remote terminals and associated OCDs, despite concerns regarding potential

operating in a competitive environment) to utilize the efficiencies of integration. In this case, accelerating the ban would work in exactly the opposite direction. This would disserve the express policies of the Communications Act to “encourage the rapid deployment of new telecommunications technologies,” P.L. No. 104-104, 110 Stat 56, 56 (1996), and to “encourage the provision of new technologies and services to the public.” 47 U.S.C. § 157(a). Accelerating the sunset would effectively slow the digital transition and slow the introduction of new technology or service. The heavy burden to justify such extraordinary results lies with the consumer electronics retailers who are advocating the change.

Conclusion

A significant and rapid change to the set-top component of digital deployment due to a major change in the regulatory landscape would wreak enormous negative consequences to Charter and its customers. Every element of its strategic plan would need to be reworked, forcing diversion of scarce manpower, finances, time and effort in a manner that could greatly slow deployment of advanced services to consumers. Acceleration of the ban on selling or leasing new integrated navigation devices to consumers is precisely the sort of regulatory shock that could impede realization of Charter’s Wired World vision.

For the foregoing reasons, the Commission should not accelerate the date by which cable operators would be prohibited from providing new integrated set-top boxes.

anticompetitive impact upon competing unaffiliated carriers, because such modification benefited the “public interest . . . [by spurring] the immediate deployment of advanced services to consumers in SBC’s regions”).

Respectfully submitted,

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